

1 Mildred K. O'Linn (State Bar No. 159055)
missy.olinn@manningkass.com

2 Lynn Carpenter (State Bar No. 310011)
lynn.carpenter@manningkass.com

3 Maya Sorensen (State Bar No. 250722)
Maya.Sorensen@manningkass.com

4 **MANNING & KASS**
ELLROD, RAMIREZ, TRESTER LLP
5 801 S. Figueroa St., 15th Floor
Los Angeles, CA 90017
6 Main: (213) 624-6900

7 Attorneys for Defendants, CITY OF
FRESNO, OFFICER MANUEL
8 ROMERO, OFFICER REY MEDELES,
and OFFICER GUSTAVO GUTIERREZ

9 **UNITED STATES DISTRICT COURT**

10 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

11
12 CHI THANH NGO,
13
14 Plaintiff,

15 v.

16 FRESNO POLICE OFFICER
MANUEL ROMERO FRESNO
17 POLICE OFFICER REY MEDELES;
FRESNO POLICE OFFICER
18 GUSTAVO GUTIERREZ; THE CITY
OF FRESNO; UNKNOWN LAW
ENFORCEMENT OFFICERS

19 Defendants.
20
21
22

Case No. 1:24-cv-00472-KES-BAM
District Judge Kirk E. Sherriff
Magistrate Judge Barbara A. McAuliffe

**ANSWER OF DEFENDANTS CITY
OF FRESNO, OFFICER MANUEL
ROMERO, OFFICER REY
MEDELES, AND OFFICER
GUSTAVO GUTIERREZ TO
PLAINTIFF'S COMPLAINT FOR
DAMAGES; DEMAND FOR JURY
TRIAL**

Filed Date: 04/21/24
Trial Date: N/A

23
24
25 Defendants CITY OF FRESNO, OFFICER MANUEL ROMERO, OFFICER
26 REY MEDELES, and OFFICER GUSTAVO GUTIERREZ ("Defendants") hereby
27 answer Plaintiff's Complaint for Damages on file herein (Doc. 1, hereinafter referred
28 to as the "Complaint") and Defendants hereby admit, deny, and allege as follows:

1 1. Answering Paragraph 1 of the Complaint: Answering Defendants admit
2 that jurisdiction is vested in this Court under 28 U.S.C. § 1331 and 28 U.S.C. §
3 1343(a)(3)-(4).

4 2. Answering Paragraph 2 of the Complaint: Answering Defendants admit
5 that venue is proper in the Eastern District of California – Fresno Division under 28
6 U.S.C. § 1391(b).

7 3. Answering Paragraph 3 of the Complaint: Answering Defendants do not
8 have sufficient knowledge, or information or belief, to enable Defendants to answer
9 the allegations, as stated, and on those grounds deny generally and specifically each
10 allegation contained therein – and Defendants deny all liability and/or wrongdoing.

11 4. Answering Paragraph 4 of the Complaint: Answering Defendants do not
12 have sufficient knowledge, or information or belief, to enable Defendants to answer
13 the allegations contained within this paragraph, as stated, and on those grounds deny
14 generally and specifically each and every allegation contained therein – and
15 Defendants deny all liability and/or wrongdoing.

16 5. Answering Paragraph 5 of the Complaint: Answering Defendants admit
17 that Defendant Officer Manuel Romero is a member of the Fresno Police Department.
18 As to the remaining allegations contained in this paragraph, answering Defendants do
19 not have sufficient knowledge, or information or belief, to enable Defendants to
20 answer the allegations, as stated, and on those grounds deny generally and specifically
21 each allegation contained therein – and Defendants deny all liability and/or
22 wrongdoing.

23 6. Answering Paragraph 6 of the Complaint: Answering Defendants admit
24 that Defendant Officer Bryce Rey Medeles is a member of the Fresno Police
25 Department. As to the remaining allegations contained in this paragraph, answering
26 Defendants do not have sufficient knowledge, or information or belief, to enable
27 Defendants to answer the allegations, as stated, and on those grounds deny generally
28 and specifically each allegation contained therein – and Defendants deny all liability

1 and/or wrongdoing.

2 7. Answering Paragraph 7 of the Complaint: Answering Defendants admit
3 that Defendant Officer Gustavo Gutierrez is a member of the Fresno Police
4 Department. As to the remaining allegations contained in this paragraph, answering
5 Defendants do not have sufficient knowledge, or information or belief, to enable
6 Defendants to answer the allegations, as stated, and on those grounds deny generally
7 and specifically each allegation contained therein – and Defendants deny all liability
8 and/or wrongdoing.

9 8. Answering Paragraph 8 of the Complaint: Answering Defendants admit
10 that the City of Fresno was at all times mentioned in the Complaint a municipal
11 corporation duly authorized to operate under the laws of the state of California, and
12 operated the Fresno Police Department under its supervision. As to the remaining
13 allegations contained in this paragraph, answering Defendants do not have sufficient
14 knowledge, or information or belief, to enable Defendants to answer the allegations,
15 as stated, and on those grounds deny generally and specifically each allegation
16 contained therein – and Defendants deny all liability and/or wrongdoing.

17 9. Answering Paragraph 9 of the Complaint: Answering Defendants do not
18 have sufficient knowledge, or information or belief, to enable Defendants to answer
19 the allegations contained within this paragraph, as stated, and on those grounds deny
20 generally and specifically each and every allegation contained therein – and
21 Defendants deny all liability and/or wrongdoing.

22 10. Answering Paragraph 10 of the Complaint: Answering Defendants do
23 not have sufficient knowledge, or information or belief, to enable Defendants to
24 answer the allegations contained within this paragraph, as stated, and on those
25 grounds deny generally and specifically each and every allegation contained therein
26 – and Defendants deny all liability and/or wrongdoing.

27 11. Answering Paragraph 11 of the Complaint: Answering Defendants do
28 not have sufficient knowledge, or information or belief, to enable Defendants to

1 answer the allegations contained within this paragraph, as stated, and on those
2 grounds deny generally and specifically each and every allegation contained therein
3 – and Defendants deny all liability and/or wrongdoing.

4 12. Answering Paragraph 12 of the Complaint: Answering Defendants do
5 not have sufficient knowledge, or information or belief, to enable Defendants to
6 answer the allegations contained within this paragraph, as stated, and on those
7 grounds deny generally and specifically each and every allegation contained therein
8 – and Defendants deny all liability and/or wrongdoing.

9 13. Answering Paragraph 13 of the Complaint: Answering Defendants do
10 not have sufficient knowledge, or information or belief, to enable Defendants to
11 answer the allegations contained within this paragraph, as stated, and on those
12 grounds deny generally and specifically each and every allegation contained therein
13 – and Defendants deny all liability and/or wrongdoing.

14 14. Answering Paragraph 14 of the Complaint: Answering Defendants do
15 not have sufficient knowledge, or information or belief, to enable Defendants to
16 answer the allegations contained within this paragraph, as stated, and on those
17 grounds deny generally and specifically each and every allegation contained therein
18 – and Defendants deny all liability and/or wrongdoing.

19 15. Answering Paragraph 15 of the Complaint: Answering Defendants do
20 not have sufficient knowledge, or information or belief, to enable Defendants to
21 answer the allegations contained within this paragraph, as stated, and on those
22 grounds deny generally and specifically each and every allegation contained therein
23 – and Defendants deny all liability and/or wrongdoing.

24 16. Answering Paragraph 16 of the Complaint: Answering Defendants do
25 not have sufficient knowledge, or information or belief, to enable Defendants to
26 answer the allegations contained within this paragraph, as stated, and on those
27 grounds deny generally and specifically each and every allegation contained therein
28 – and Defendants deny all liability and/or wrongdoing.

1 17. Answering Paragraph 17 of the Complaint: Answering Defendants do
2 not have sufficient knowledge, or information or belief, to enable Defendants to
3 answer the allegations contained within this paragraph, as stated, and on those
4 grounds deny generally and specifically each and every allegation contained therein
5 – and Defendants deny all liability and/or wrongdoing.

6 18. Answering Paragraph 18 of the Complaint: Answering Defendants do
7 not have sufficient knowledge, or information or belief, to enable Defendants to
8 answer the allegations contained within this paragraph, as stated, and on those
9 grounds deny generally and specifically each and every allegation contained therein
10 – and Defendants deny all liability and/or wrongdoing.

11 19. Answering Paragraph 19 of the Complaint: Answering Defendants
12 repeat, reiterate, and re-allege all of the admissions and denials contained in the
13 foregoing Answer which are set forth to each and every allegation contained in
14 paragraphs 1 through 18, inclusive, of the Complaint.

15 20. Answering Paragraph 20 of the Complaint: the allegations contain an
16 ultimate issue of law and not fact, and on those grounds answering Defendants
17 generally deny the allegations contained therein, – and Defendants deny all liability
18 and/or wrongdoing.

19 21. Answering Paragraph 21 of the Complaint: Answering Defendants do
20 not have sufficient knowledge, or information or belief, to enable Defendants to
21 answer the allegations contained within this paragraph, as stated, and on those
22 grounds deny generally and specifically each and every allegation contained therein
23 – and Defendants deny all liability and/or wrongdoing.

24 22. Answering Paragraph 22 of the Complaint: Answering Defendants do
25 not have sufficient knowledge, or information or belief, to enable Defendants to
26 answer the allegations contained within this paragraph, as stated, and on those
27 grounds deny generally and specifically each and every allegation contained therein
28 – and Defendants deny all liability and/or wrongdoing.

23. Answering Paragraph 23 of the Complaint: Answering Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein – and Defendants deny all liability and/or wrongdoing.

24. Answering Paragraph 24 of the Complaint: Answering Defendants repeat, reiterate, and re-allege all of the admissions and denials contained in the foregoing Answer which are set forth to each and every allegation contained in paragraphs 1 through 23, inclusive, of the Complaint.

25. Answering Paragraph 25 of the Complaint: the allegations contain an ultimate issue of law and not fact, and on those grounds answering Defendants generally deny the allegations contained therein, – and Defendants deny all liability and/or wrongdoing.

26. Answering Paragraph 26 of the Complaint: Answering Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein – and Defendants deny all liability and/or wrongdoing.

27. Answering Paragraph 27 of the Complaint: Answering Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein – and Defendants deny all liability and/or wrongdoing.

28. Answering Paragraph 28 of the Complaint: Answering Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein – and Defendants deny all liability and/or wrongdoing.

29. Answering Paragraph 29 of the Complaint: Answering Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein – and Defendants deny all liability and/or wrongdoing.

30. Answering Paragraph 30 of the Complaint: Answering Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein – and Defendants deny all liability and/or wrongdoing.

31. Answering Paragraph 31 of the Complaint: Answering Defendants repeat, reiterate, and re-allege all of the admissions and denials contained in the foregoing Answer which are set forth to each and every allegation contained in paragraphs 1 through 30, inclusive, of the Complaint.

32. Answering Paragraph 32 of the Complaint: Answering Defendant City of Fresno does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds denies generally and specifically each and every allegation contained therein – and Defendant denies all liability and/or wrongdoing.

33. Answering Paragraph 33 of the Complaint: Answering Defendant City of Fresno does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds denies generally and specifically each and every allegation contained therein – and Defendant denies all liability and/or wrongdoing.

34. Answering Paragraph 34 of the Complaint: Answering Defendant City of Fresno does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds denies generally and specifically each and every allegation contained

1 therein – and Defendant denies all liability and/or wrongdoing.

2 35. Answering Paragraph 35 of the Complaint: Answering Defendant City
3 of Fresno does not have sufficient knowledge, or information or belief, to enable
4 Defendant to answer the allegations contained within this paragraph, as stated, and on
5 those grounds denies generally and specifically each and every allegation contained
6 therein – and Defendant denies all liability and/or wrongdoing.

7 36. Answering Paragraph 36 of the Complaint: Answering Defendant City
8 of Fresno does not have sufficient knowledge, or information or belief, to enable
9 Defendant to answer the allegations contained within this paragraph, as stated, and on
10 those grounds denies generally and specifically each and every allegation contained
11 therein – and Defendant denies all liability and/or wrongdoing.

12 37. Answering Paragraph 37 of the Complaint: Answering Defendants
13 repeat, reiterate, and re-allege all of the admissions and denials contained in the
14 foregoing Answer which are set forth to each and every allegation contained in
15 paragraphs 1 through 36, inclusive, of the Complaint.

16 38. Answering Paragraph 38 of the Complaint: Answering Defendants do
17 not have sufficient knowledge, or information or belief, to enable Defendants to
18 answer the allegations contained within this paragraph, as stated, and on those
19 grounds deny generally and specifically each and every allegation contained therein
20 – and Defendants deny all liability and/or wrongdoing.

21 39. Answering Paragraph 39 of the Complaint, including subsections (a) –
22 (f): Answering Defendant City of Fresno does not have sufficient knowledge, or
23 information or belief, to enable Defendant to answer the allegations contained within
24 this paragraph, as stated, and on those grounds denies generally and specifically each
25 and every allegation contained therein – and Defendant denies all liability and/or
26 wrongdoing.

27 40. Answering Paragraph 40 of the Complaint: Answering Defendants do
28 not have sufficient knowledge, or information or belief, to enable Defendants to

1 answer the allegations contained within this paragraph, as stated, and on those
2 grounds deny generally and specifically each and every allegation contained therein
3 – and Defendants deny all liability and/or wrongdoing.

4 41. Answering Paragraph 41 of the Complaint: Answering Defendants do
5 not have sufficient knowledge, or information or belief, to enable Defendants to
6 answer the allegations contained within this paragraph, as stated, and on those
7 grounds deny generally and specifically each and every allegation contained therein
8 – and Defendants deny all liability and/or wrongdoing.

9 42. Answering Paragraph 42 of the Complaint: Answering Defendants do
10 not have sufficient knowledge, or information or belief, to enable Defendants to
11 answer the allegations contained within this paragraph, as stated, and on those
12 grounds deny generally and specifically each and every allegation contained therein
13 – and Defendants deny all liability and/or wrongdoing.

14 43. Answering Paragraph 43 of the Complaint: Answering Defendants do
15 not have sufficient knowledge, or information or belief, to enable Defendants to
16 answer the allegations contained within this paragraph, as stated, and on those
17 grounds deny generally and specifically each and every allegation contained therein
18 – and Defendants deny all liability and/or wrongdoing.

19 44. Answering Paragraph 44 of the Complaint: Answering Defendants
20 repeat, reiterate, and re-allege all of the admissions and denials contained in the
21 foregoing Answer which are set forth to each and every allegation contained in
22 paragraphs 1 through 43, inclusive, of the Complaint.

23 45. Answering Paragraph 45 of the Complaint: the allegations contain an
24 ultimate issue of law and not fact, and on those grounds answering Defendants
25 generally deny the allegations contained therein, – and Defendants deny all liability
26 and/or wrongdoing.

27 46. Answering Paragraph 46 of the Complaint: Answering Defendants do
28 not have sufficient knowledge, or information or belief, to enable Defendants to

1 answer the allegations contained within this paragraph, as stated, and on those
2 grounds deny generally and specifically each and every allegation contained therein
3 – and Defendants deny all liability and/or wrongdoing.

4 47. Answering Paragraph 47 of the Complaint: Answering Defendants do
5 not have sufficient knowledge, or information or belief, to enable Defendants to
6 answer the allegations contained within this paragraph, as stated, and on those
7 grounds deny generally and specifically each and every allegation contained therein
8 – and Defendants deny all liability and/or wrongdoing.

9 48. Answering Paragraph 48 of the Complaint: Answering Defendants do
10 not have sufficient knowledge, or information or belief, to enable Defendants to
11 answer the allegations contained within this paragraph, as stated, and on those
12 grounds deny generally and specifically each and every allegation contained therein
13 – and Defendants deny all liability and/or wrongdoing.

14 49. Answering Paragraph 49 of the Complaint: Answering Defendants do
15 not have sufficient knowledge, or information or belief, to enable Defendants to
16 answer the allegations contained within this paragraph, as stated, and on those
17 grounds deny generally and specifically each and every allegation contained therein
18 – and Defendants deny all liability and/or wrongdoing.

19 50. Answering Paragraph 50 of the Complaint: Answering Defendants
20 repeat, reiterate, and re-allege all of the admissions and denials contained in the
21 foregoing Answer which are set forth to each and every allegation contained in
22 paragraphs 1 through 49, inclusive, of the Complaint.

23 51. Answering Paragraph 51 of the Complaint: the allegations contain an
24 ultimate issue of law and not fact, and on those grounds answering Defendants
25 generally deny the allegations contained therein, – and Defendants deny all liability
26 and/or wrongdoing.

27 52. Answering Paragraph 52 of the Complaint: Answering Defendants do
28 not have sufficient knowledge, or information or belief, to enable Defendants to

1 answer the allegations contained within this paragraph, as stated, and on those
2 grounds deny generally and specifically each and every allegation contained therein
3 – and Defendants deny all liability and/or wrongdoing.

4 53. Answering Paragraph 53 of the Complaint: Answering Defendants do
5 not have sufficient knowledge, or information or belief, to enable Defendants to
6 answer the allegations contained within this paragraph, as stated, and on those
7 grounds deny generally and specifically each and every allegation contained therein
8 – and Defendants deny all liability and/or wrongdoing.

9 54. Answering Paragraph 54 of the Complaint: Answering Defendants do
10 not have sufficient knowledge, or information or belief, to enable Defendants to
11 answer the allegations contained within this paragraph, as stated, and on those
12 grounds deny generally and specifically each and every allegation contained therein
13 – and Defendants deny all liability and/or wrongdoing.

14 55. Answering Paragraph 55 of the Complaint: Answering Defendants do
15 not have sufficient knowledge, or information or belief, to enable Defendants to
16 answer the allegations contained within this paragraph, as stated, and on those
17 grounds deny generally and specifically each and every allegation contained therein
18 – and Defendants deny all liability and/or wrongdoing.

19 56. Answering Paragraph 56 of the Complaint: Answering Defendants do
20 not have sufficient knowledge, or information or belief, to enable Defendants to
21 answer the allegations contained within this paragraph, as stated, and on those
22 grounds deny generally and specifically each and every allegation contained therein
23 – and Defendants deny all liability and/or wrongdoing.

24 57. Answering Paragraph 57 of the Complaint: Answering Defendants do
25 not have sufficient knowledge, or information or belief, to enable Defendants to
26 answer the allegations contained within this paragraph, as stated, and on those
27 grounds deny generally and specifically each and every allegation contained therein
28 – and Defendants deny all liability and/or wrongdoing.

1 58. Answering Paragraph 58 of the Complaint: Answering Defendants
2 repeat, reiterate, and re-allege all of the admissions and denials contained in the
3 foregoing Answer which are set forth to each and every allegation contained in
4 paragraphs 1 through 57, inclusive, of the Complaint.

5 59. Answering Paragraph 59 of the Complaint: Answering Defendants do
6 not have sufficient knowledge, or information or belief, to enable Defendants to
7 answer the allegations contained within this paragraph, as stated, and on those
8 grounds deny generally and specifically each and every allegation contained therein
9 – and Defendants deny all liability and/or wrongdoing.

10 60. Answering Paragraph 60 of the Complaint: Answering Defendants do
11 not have sufficient knowledge, or information or belief, to enable Defendants to
12 answer the allegations contained within this paragraph, as stated, and on those
13 grounds deny generally and specifically each and every allegation contained therein
14 – and Defendants deny all liability and/or wrongdoing.

15 61. Answering Paragraph 61 of the Complaint: Answering Defendants do
16 not have sufficient knowledge, or information or belief, to enable Defendants to
17 answer the allegations contained within this paragraph, as stated, and on those
18 grounds deny generally and specifically each and every allegation contained therein
19 – and Defendants deny all liability and/or wrongdoing.

20 62. Answering Paragraph 62 of the Complaint: Answering Defendants do
21 not have sufficient knowledge, or information or belief, to enable Defendants to
22 answer the allegations contained within this paragraph, as stated, and on those
23 grounds deny generally and specifically each and every allegation contained therein
24 – and Defendants deny all liability and/or wrongdoing.

25 63. Answering Paragraph 63 of the Complaint: Answering Defendants do
26 not have sufficient knowledge, or information or belief, to enable Defendants to
27 answer the allegations contained within this paragraph, as stated, and on those
28 grounds deny generally and specifically each and every allegation contained therein

1 – and Defendants deny all liability and/or wrongdoing.

2 64. Answering Paragraph 64 of the Complaint: Answering Defendants do
3 not have sufficient knowledge, or information or belief, to enable Defendants to
4 answer the allegations contained within this paragraph, as stated, and on those
5 grounds deny generally and specifically each and every allegation contained therein
6 – and Defendants deny all liability and/or wrongdoing.

7 65. Answering Plaintiff's Prayer For Relief, including subsections (1)
8 through (5), Defendants deny all liability to plaintiff, including, but not limited to, all
9 liability for any and all damages, including general damages, special damages, funeral
10 and burial expenses, punitive and exemplary damages, statutory damages, attorneys'
11 fees, costs of suit, prejudgment interest, and/or for any relief of any kind from
12 Defendants to Plaintiff.

13 66. To the extent Plaintiff asserts any other claims or contentions not
14 specifically addressed herein above, Defendants generally and specifically deny each
15 and every remaining allegation and/or claim – and Defendants deny all liability and/or
16 wrongdoing.

17 **AFFIRMATIVE DEFENSES**

18 1. As separate and affirmative defenses, Defendants allege as follows:

19 **FIRST AFFIRMATIVE DEFENSE**

20 2. Plaintiff's Complaint, and each alleged cause of action in it, fails to state
21 a claim upon which relief can be granted.

22 3. Plaintiff's Complaint also fails to state a claim against any Defendant in
23 this action.

24 **SECOND AFFIRMATIVE DEFENSE**

25 **(Tort Claims Act Violation)**

26 4. This action is barred by Plaintiff's failure to comply with the government
27 tort claims presentation requirements, California Government Code § 900, *et seq.*,
28 including but not limited to §§ 900, 900.4, 901, 905, 905.2, 910, 911, 911.2, 911.4,

1 945.4, 945.6, 946.6, 950.2, and 950.6, to the extent applicable.

2 5. The Complaint is barred based on Plaintiff's failure to exhaust
3 administrative remedies prior to filing this lawsuit.

4 6. Plaintiff's recovery is barred because the causes of action stated in the
5 Complaint do not correspond with the legal claims asserted in Plaintiff's written claim.
6 The Complaint thereby alleges legal bases for recovery which are not fairly reflected
7 in the written claim.

8 **THIRD AFFIRMATIVE DEFENSE**

9 **(Waiver, Estoppel, Unclean Hands)**

10 7. Defendants allege that Plaintiff's actions are barred by reason of conduct,
11 actions and inactions of Plaintiff which amount to and constitute a waiver of any right
12 plaintiff(s) may or might have had in reference to the matters and things alleged in
13 the Complaint, or that otherwise estop Plaintiff from recovery in this action, including
14 but not limited to the doctrine of unclean hands.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 **(Failure to Mitigate Damages)**

17 8. Plaintiff's claims are barred or limited to the extent plaintiff failed to
18 mitigate plaintiff's injuries or damages, if there were any. Plaintiff has failed to
19 mitigate the damages, if any, which plaintiff(s) has/have sustained, and to exercise
20 reasonable care to avoid the consequences of harms, if any, in that, among other
21 things, Plaintiff has failed to use reasonable diligence in caring for any injuries, failed
22 to use reasonable means to prevent aggravation of any injuries and failed to take
23 reasonable precautions to reduce any injuries and damages.

24 **FIFTH AFFIRMATIVE DEFENSE**

25 **(Contributory and/or Comparative Liability)**

26 9. Plaintiff's claims are barred or limited by Plaintiff's
27 contributory/comparative negligence or other conduct, acts, or omissions, and to the
28 extent plaintiff suffered any injury or damages, it was the result of plaintiff's own

negligent or deliberate actions or omissions.

10. Plaintiff's recovery is barred because any injury or damage suffered by plaintiff was caused solely by reason of the Plaintiff's wrongful acts and conduct and the willful resistance to a peace officer in the discharge their duties. The conduct set forth in the Complaint, if and to the extent it occurred, was privileged and justified and done with a good faith belief that it was correct and no action may be taken against the answering Defendants on account of such conduct.

SIXTH AFFIRMATIVE DEFENSE

(Public Entity/Employee Immunity for Others' Torts)

11. Plaintiff's recovery is barred because public entities and employees are immune from liability for any injury caused by the act or omission of another person. Gov. Code §§ 815 *et seq.*, 820.2 *et seq.*

12. The answering Defendants are informed and believe and thereon allege that if Plaintiff sustained any injury or damages, such injury or damages were solely caused or contributed to by the wrongful conduct of other defendants and/or entities or persons other than the answering Defendants. To the extent that Plaintiff's damages were so caused, any recovery by Plaintiff as against the answering Defendants should be subject to proportionately comparative equitable indemnity/contribution from such third parties.

SEVENTH AFFIRMATIVE DEFENSE

(Public Entity/Employee Immunity for Discretionary Acts)

13. There is no liability for any injury or damages, if any there were, resulting from an exercise of discretion vested in a public employee, whether or not such discretion be abused. Gov. Code § 815.2, 820.2, 820.4, 820.8, 820 *et seq.*

14. Plaintiff's recovery is barred because public entities and employees are immune from liability for discharging their mandatory duties with reasonable diligence.

15. A public employee may not be held liable for injuries or damages, if any,

1 caused by failure to adopt or by adoption of an enactment or by failure to enforce an
 2 enactment and/or law, for an injury caused by his issuance, denial, suspension or
 3 revocation or by his failure or refusal to issue, deny, suspend or revoke, any permit,
 4 license, certificate, approval, order, or similar authorization, where he is authorized
 5 by enactment to determine whether or not such authorization should be issued, denied,
 6 suspended or revoked, pursuant to Government Code §§ 818.2, 818.4, 818.8, 821 and
 7 821.2. Based thereon, the answering Defendants are immune from liability for any
 8 injuries claimed by Plaintiff, herein.

9 16. Defendant(s) is/are immune for any detriment resulting from any of its
 10 actions or omissions at the time of the incident of which Plaintiff complains pursuant
 11 to Government Code § 810 *et seq.*, 815 *et seq.*, 820 *et seq.*, and 845 *et seq.*, including,
 12 but not limited to, §§ 810, 810.2, 810.4, 810.6, 810.8, 811, 811.2, 811.4, 811.6, 811.8,
 13 820.6, 820.8, 821, 821.2, 821.4, 821.6, 821.8, 822.2, 830.5, 830.6, 835.4, 844.6, and
 14 Government Code §§ 854, *et seq.*, including, but not limited to, §§ 845.6, 854.6,
 15 854.8(a)(2), and §§ 855.4, 855.6, 855.8 and 856.4.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 **(Public Entity Immunity)**

18 17. To the extent that the Complaint attempts to predicate liability upon any
 19 public entity defendant or any employee thereof for purported negligence in retention,
 20 hiring, employment, training, or supervision of any public employee, such liability is
 21 barred by Government Code sections 815.2 and 820.2 and *Herndon v. County of*
 22 *Marin* (1972) 25 Cal. App. 3d 933, 935, 936, *rev'd on other grounds by Sullivan v.*
 23 *County of Los Angeles* (1974) 12 Cal.3d 710; and by the lack of any duty running to
 24 Plaintiff; by the fact that any such purported act or omission is governed exclusively
 25 by statute and is outside the purview of any public employees' authority; and by the
 26 failure of any such acts or omissions to be the proximate or legal cause of any injury
 27 alleged in the Complaint. *See de Villers v. County of San Diego*, 156 Cal.App.4th
 28 238, 251-253, 255-256 (2007).

1 18. Defendants may not be held liable on a *respondeat superior* theory for
2 any negligent or wrongful act or omission on the part of any subordinate. Cal.
3 Government Code §§ 844.6, 845.6; Cal. Civil Code § 2351; *Malloy v. Fong* (1951)
4 37 Cal.2d 356, 378-379; *Monell v. Department of Social Services of the City of New*
5 *York* (1978) 436 U.S. 658; *Larez v. City of Los Angeles* (9th Cir. 1991) 946 F.2d 630,
6 645-646; *cf. City of Canton v. Harris*, 489 U.S. 378, 388-389 (1989); *City of Los*
7 *Angeles v. Heller*, 475 U.S. 796 (1986).

8 **NINTH AFFIRMATIVE DEFENSE**

9 **(Qualified Immunity & Good Faith Immunity)**

10 19. Defendant City and its agents or officers at all times relevant to this
11 action acted reasonably and prudently under the circumstances. Defendants therefore
12 assert the individual defendant's Qualified Immunity from liability to the fullest extent
13 applicable.

14 20. Defendants are immune from liability under the Federal Civil Rights Act
15 because they acted in good faith with an honest and reasonable belief that their actions
16 were necessary and appropriate. Defendants are immune from liability under the
17 Federal Civil Rights Act because a reasonable police officer could believe that his
18 acts and conduct were objectively reasonable under the totality of the circumstances.
19 Defendants are immune from liability under the Federal Civil Rights Act because their
20 conduct did not violate clearly established rights of which a reasonable officer would
21 have known. Defendants are also immune from liability under the doctrine of
22 Qualified Immunity.

23 21. At all relevant times, Defendants acted within the scope of discretion,
24 with due care, and good faith fulfillment of responsibilities pursuant to applicable
25 statutes, rules and regulation, within the bounds of reason, and with the good faith
26 belief that their actions comported with all applicable federal and state laws. *Harlow*
27 *v. Fitzgerald* (1982) 457 U.S. 800; Cal Gov. Code §§ 815.2 and 820.2.

28 ///

TENTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

22. At the time and place referred to in the Complaint, and before such event, plaintiff knew, appreciated, and understood each and every risk involved in placing himself in the position which plaintiff then assumed, and willingly, knowingly and voluntarily assumed each of such risks, including, but not limited to, the risk of suffering personal bodily injury and/or lawful deprivation of right(s).

ELEVENTH AFFIRMATIVE DEFENSE

23. Defendants contend that they cannot fully anticipate all affirmative defenses that may be applicable to this action based on the conclusory terms used in Plaintiff's Complaint. Accordingly, Defendants expressly reserve the right to assert additional affirmative defenses if and to the extent that such affirmative defenses become applicable.

PRAYER FOR RELIEF

The answering Defendants pray as follows:

1. That Plaintiff takes nothing by this action;
2. That Defendants be awarded attorneys' fees, costs of suit and costs of proof, and such other relief as the Court deems just.

JURY DEMAND

Defendants demand a trial by jury as to each issue triable by jury.

DATED: May 2, 2024

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

By: /s/ Mildred K' O'Linn
Mildred K. O'Linn
Lynn Carpenter
Maya Sorensen
Attorneys for Defendants, CITY OF
FRESNO, OFFICER MANUEL
ROMERO, OFFICER REY MEDELES,
and OFFICER GUSTAVO GUTIERREZ